

ENTERED

July 19, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JACOB HERNDON,

Petitioner,

VS.

HARRIS COUNTY SHERIFFS
DEPARTMENT, *et al*,

Respondents.

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CIVIL ACTION NO. 4:18-CV-4608

ORDER OF PARTIAL DISMISSAL

Jacob Herndon is an inmate in the Harris County jail. He filed a complaint under 42 U.S.C. § 1983 alleging violations of his rights by several jail employees. One of the named defendants is the Harris County Sheriff's Department.

Section 1915A of title 28 of the United States Code requires a federal district court to “review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” If the complaint presents no cognizable claims, the court must dismiss the complaint.

The capacity of an entity to be sued is “determined by the law of the state in which the district court is held.” Fed.R.Civ.P. 17(b). A county or city department must have a separate legal existence to be sued. *See Darby v. Pasadena Police Dept.*, 939 F.2d 311, 313 (5th Cir.1991). Under Texas law, sheriffs' departments cannot be sued. *See Propes v. Plano Police Dept.*, 2005 WL 1177880 (E.D.Tex. May 18, 2005). Therefore, Herndon's claims against the Harris County Sheriff's Department must be dismissed.

Accordingly, it is ORDERED that Herndon's claims against the Harris County Sheriff's Department are DISMISSED pursuant to 28 U.S.C. § 1915A, and the Harris County Sheriff's Department is dismissed from this case. The Court will conduct further proceedings on Herndon's remaining claims.

It is so ORDERED.

SIGNED on this 18th day of July, 2019.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge